IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL
Criminal Misc. Appl. No. 64 of 2005

Mobin S/o Late Shri Nasim
R/o Village-Khatakheri
P.S. Bhagwanpur
At Present R/o Village Rahimpur
P.S. Gangnaher, Roorkee
District Haridwar .....Applicant

Versus

1. State of Uttaranchal
2. First Additional Civil Judge (J.D.)
   Roorkee, District Haridwar
3. Smt. Shamsheera W/o Late Shri Nasim
   R/o Village-Khatakheri
   P.S. Bhagwanpur
   At present R/o Village Sirchandi
   P.S. Jhabreda, District Haridwar .....Respondents.

Shri Rajendra Singh, learned counsel for the applicant.
Shri Pawan Kumar, learned counsel for respondent No. 3.
Shri P.S. Soni, learned A.G.A. for the State.

Hon'ble Prafulla C. Pant, J

Heard learned counsel for the parties.

2. By means of this petition, moved under Section 482 of Code of Criminal Procedure, 1973 (for brevity herein after referred as Cr. P.C.) the petitioner has sought quashing of the proceedings in criminal case No. 3 of 2005 State Vs. Mobin, relating to offences punishable under Sections 420, 467, 468 I.P.C. P.S. Jhabreda, District Haridwar.

3. Learned counsel for the petitioner argued that the crime No. 69 of 2004 out of which the aforesaid criminal case has arisen is base on the WILL dated 15.11.2001, which is alleged to be false by complainant/respondent No. 3. In this connection, it is submitted on behalf of the

petitioner that said WILL is never got declared void by respondent No. 2 from any court of law. According to the First Information Report, the petitioner got the forged WILL executed, a copy of which is Annexure-1 to the petition. Annexure-1 shows that this will was signed by Nasim (executant) on 15.11.2001. Learned counsel for respondent No. 3, pointed out that the death certificate, which is filed as Annexure –2 to the counter affidavit, shows that Nasim had already died on 07.11.2001, as such, it is alleged by respondent No. 3 that Nasim could not have executed WILL on 15.11.2001. Learned counsel for the petitioner, argued that the death certificate is obtained by filing a false affidavit by respondent No. 3, three years after the death of the executant. It is further argued that the WILL in question is disputed before the consolidation authority in mutation proceedings. In the proceedings under Section 482 of Cr. P.C. this Court cannot decide such factual disputes. The trial court is the right forum where such questions can be decided after recording of evidence of the parties.

4. For the reasons, as discussed above, it is not a fit case for quashing the criminal proceedings in the above circumstances. Therefore, the petition under Section 482 Cr.P.C. is dismissed, without expressing any opinion as to the final merits of the criminal case, pending before the trial court with observation that the petitioner will be at liberty to raise all the pleas relating to his innocence before said court. It is further observed while dismissing this petition that the petitioner if arrested or surrenders before the trial court and moves bail application, his bail application shall be heard

and disposed of by the court concerned without unreasonable delay. With these observations, the petition is dismissed and interim stay order dated 11.02.2005 is vacated. (All pending applications in this case also stand disposed of).

Dt. 27.10.2006 **(Prafulla C. Pant, J.)**

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